

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**

AUG 14 2014

  
CLERK

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ALEMU T. BERHANU,

Petitioner,

vs.

DARIN YOUNG, Warden; and  
MARTY JACKLEY, Attorney General  
of the State of South Dakota,

Respondents.

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CIV 14-4060

ORDER

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The Court has conducted a *de novo* review of Petitioner's case before this Court, including Petitioner's Objections to the Report and Recommendation. The Court accepts Petitioner's representations that he is an immigrant who does not read or write English above the second grade level and that the Petitioner is not well educated or trained in legal matters. In addition, the Court accepts Petitioner's representations that some of his legal papers were lost when he was placed in the special housing unit in the Penitentiary. The Court does find that these limiting circumstances are still insufficient to invoke equitable tolling. Without equitable tolling the Petitioner's Petition before this Court is untimely as that Petition had to be brought within the one (1) year statute of limitations which is provided by 28 U.S.C. § 2244(b). The Court does adopt the Report and Recommendation including the conclusion which shows the total elapsing time of 685 days, that being in excess of the one (1) year statute of limitations. In addition, the Court finds that Petitioner has failed to make a substantial showing of the denial of a constitutional right and therefore a certificate of appealability will not issue. 28 U.S.C. 2253(c)(2). Accordingly,

IT IS ORDERED:

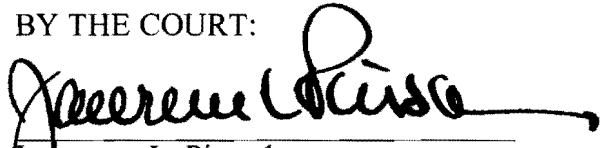
1. That the Petitioner's Objections (Doc. 12) are DENIED, and the Magistrate Judge's Report and Recommendation (Doc. 11) is ADOPTED.
2. That Respondents' Motion to Dismiss Petitioner's Application for Writ of

Habeas Corpus (Doc. 7) is GRANTED.

3. That Petitioner's Application for Writ of Habeas Corpus (Doc. 1) is DENIED with prejudice.
4. That Petitioner's Motion for Appointment of Counsel (Doc. 4) is DENIED as moot.
5. That a Certificate of Appealability shall not issue.

Dated this 17<sup>th</sup> day of August, 2014.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

By:   
Deputy